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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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George Miller

CAF-33402/03

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09/23/2009

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EXAMINER

PATEL, BHARAT C

ART UNIT

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3724

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/528,555	<b>Applicant(s)</b> MILLER, GEORGE	
	<b>Examiner</b> BHARAT C. PATEL	<b>Art Unit</b> 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-12, 14-20, 24-51, 67 and 68 is/are pending in the application.
- 4a) Of the above claim(s) 3-12, 14-18, 24-30, 33 and 36-51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2, 5, 19-20, 31-32, 34-35, 67-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. The following is a Final Office action in response to communication received on 7/17/09. Claims 1, 13, 21-23 and 51-66 are cancelled. Claims 3-12, 14-18, 24-30, 33 and 36-51 are withdrawn. Claims 67 and 68 are amended. Therefore, claims 2-3, 5, 19-20, 31-32, 34-35 and 67-68 are pending and addressed below.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 67, 2, 5, 19, 31, 32 and 68 are rejected under 35 U.S.C. 102(b) as being anticipated by Sacrey 2,015,535.

Re claims 67 & 68, Sacrey discloses a body 1-2, cutting means 20, 51, supported on the body 2 and comprising a stationary first portion 51 and moveable second portion 22 configured to cut substantially perpendicularly through a cutting plane, said moveable portion 22 being mounted (per page 2, col. 2, lines 12-26) relative to the stationary portion 51 and moveable along a path towards the stationary portion 51 as per Figs. 1-6, each portion comprising at least one cutting edge 51 or the tip portion of the cutting portion 22 which in use cooperate to cut a cast material by a shearing action, wherein the stationary portion 51 is positionable between the cast portion operated upon by the cutting means and the patient per page 3, col. 1, lines 39-43; and wherein cutting is achieved by movement of the moveable portion towards the

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stationary portion through the cutting plane; and a protection member as outside contour of the stationary portion 50 supported by the body 1-2 and positioned on one side of the cutting plane to be positioned between the cast being operated upon by cutting means 20, 51, and the patient, to protect the skin of the patient per Fig. 3; and a drive arrangement 3 for driving the moveable portion 22 to move towards the stationary portion 50, wherein the drive arrangement is located on an opposite side of the cutting plane from the protection member per Fig. 3; wherein the movable portion 22 is driven to move towards the stationary portion 50 from an opposite side of the cutting plane from the protection member 50 per figs. 1-7. It should be noted that the Applicant has not specifically and definitely claimed the cutting plane as being in the vertical or horizontal plane and with respect to the cutting members. The cutting plane can possibly be in one of the three different planes. The Examiner considers the cutting plane to be in the horizontal plane passing through the cutting edge of the first portion 51. It should also be noted that the Applicant has not specifically and definitely claimed the cutting edges of the cutter. Therefore, the Examiner considers that Sacrey satisfies the claimed subject matter.

Re claim 2, Sacrey discloses that the cutting means 22 is adapted for removing a strip of material from the cast.

Re claim 5, Sacrey discloses that the protection member 50 is releasably coupled to the body 1-2 per Figs. 2 & 4 per page 2, col. 2, lines 12-35.

Re claim 19, Sacrey discloses that the first portion 51 is located on the protection member 50 per Figs. 2 and 4.

Re claim 31, Sacrey discloses that a leading edge of the second portion 22 of the cutting means is chamfered per Figs. 4 & 8.

Re claim 32, Sacrey discloses that the first portion 51 defines an aperture which is chamfered at one side per Figs. 4 & 8.

4. Claims 67, 2, 5, 19, 31, 32, 34-35 and 68 are rejected under 35 U.S.C. 102(b) as being anticipated by Wang 6,308,421.

Re claim 67, Wang discloses a body 11, cutting means 1, 2, supported on the body 11 and comprising a stationary first portion 53 and moveable second portion 31 configured to cut substantially perpendicularly through a cutting plane, said moveable portion 31 being mounted (per col. 2, lines 42-43) relative to the stationary portion 53 and moveable along a path towards the stationary portion 53 as per Fig. 1, each portion comprising at least one cutting edge which in use cooperate to cut a cast material by a shearing action, wherein the stationary portion is positionable between the cast portion operated upon by the cutting means and the patient; and wherein cutting is achieved by movement of the moveable portion towards the stationary portion through the cutting plane; and a protection member 55 supported by the body 5 and positioned on one side of the cutting plane to be positioned between the cast being operated upon by cutting means, 1 and 2 per Fig. 1, and the patient, to protect the skin of the patient; and a drive arrangement for driving the moveable portion to move towards the stationary portion, wherein the drive arrangement is located on an opposite side of the cutting plane from the protection member. It should be noted that the body 5 provides extension of the first portion and also for the protection member per Fig. 1. It should be noted that the

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Applicant has not specifically and definitely claimed the cutting plane as being in the vertical or horizontal plane and with respect to the cutting members. The cutting plane can possibly be in one of the three different planes. The Examiner considers the cutting plane to be in the horizontal plane passing through the cutting edge of the first portion 53. It should also be noted that a protection member taught by Wang is fully capable of being adapted so that it can safely and operationally being held between the skin of the patient and the cast material.

Re claim 2, Wang discloses that the cutting means 1, 2, is adapted for removing a strip of material from the cast.

Re claim 5, Wang discloses that the protection member 55 is releasably coupled to the body 11 per Fig. 1.

Re claim 19, Wang discloses that the first portion 53 is located on the protection member 55 per figs. 1 and 2.

Re claim 31, Wang discloses that a leading edge of the second portion 31 of the cutting means is chamfered per Fig. 1. It should be noted that Wang shows the chamfer at the leading edge, in longitudinal direction of the second portion, and also along the thickness portion of the same portion per Fig. 1.

Re claim 32, Wang discloses that the first portion 53 defines an aperture which is chamfered at one side per Figs. 1 & 2. It should be noted the aperture is an opening or gap as defined (by [www.dictionary.com](http://www.dictionary.com)) per attached document for reference.

Re claim 34, Wang discloses that the cutting means 1, 2, is adapted to remove continuous strips of material from a cast and the first portion 53 of the cutting means 1,

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2, comprises a strip exit, as Right Hand side portion of the 53 per Fig. 1, to allow a strip of the cast which is being removed to pass therethrough.

Re claim 35, Wang discloses that the strip exit, as Right Hand side portion of the 53, comprises tapered sides, which taper outwards towards Right Hand side per Fig. 1, away from the aperture of the first portion 53.

Re claim 68, Wang discloses a body 11, cutting means 1, 2, supported on the body 11 and comprising a stationary first portion 53 and second moveable portion 31 configured to cut substantially perpendicularly through a cutting plane, said moveable portion 31 being pivotally mounted (per col. 2, lines 42-43) relative to the stationary portion 53 and moveable along a path towards the stationary portion 53 as per Fig. 1, each portion comprising at least one cutting edge which in use cooperate to cut a cast material by a shearing action, wherein the stationary portion is positionable between the cast portion operated upon by the cutting means and the patient and wherein cutting is achieved by movement of the moveable portion towards the stationary portion through the cutting plane; and a protection member 55 supported by the body 5 and positioned on one side of the cutting plane to be positioned between the cast being operated upon by cutting means, 1 and 2 per Fig. 1, and the patient, to protect the skin of the patient; wherein the movable portion 31 is driven to move towards the stationary portion 53 from an opposite side of the cutting plane from the protection member 55. It should be noted that the Applicant has not specifically and definitely claimed the cutting plane as being in the vertical or horizontal plane and with respect to the cutting members. The cutting plane can possibly be in one of the three different planes. The Examiner considers the

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cutting plane to be in the horizontal plane passing through the cutting edge of the first portion 53. It should also be noted that a protection member taught by Wang is fully capable of being adapted so that it can safely and operationally being held between the skin of the patient and the cast material.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wang 6,308,421.

Wang teaches the invention as claimed as discussed above. However, Wang fails to teach that the first portion 53 is mounted separately from the protecting member 55. Thus Wang teaches an integrated piece of first stationary portion and the protecting member that can be separated and be separately mounted when this integrated part made out of two separate parts. It would have been obvious to one having ordinary skill in the art at the time the invention was made to separately mount the protection member to the first portion, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.



***Response to Arguments***

7. Applicant's arguments with respect to claims 67-68 have been considered but are moot in view of the new ground(s) of rejection under 35 U.S.C. 102(b) as being anticipated by Sacrey 2,015,535. Applicant's arguments filed on 7/17/09 have been fully considered but they are not persuasive because the prior art of Wang still reads on the amended claims as discussed above in the rejection of the respective claims.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Allen (4532707) and Kimura (5457889) teach reciprocating device capable of cutting the cast material; Hobgood (2003/0065334) teaches a cast removal device attachable to the reciprocating device for cast material cutting; and Martinez (4577629), Hudnutt (4625405), Chabbert (5020226), & Chin teach various devices for cutting cast material.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BHARAT C. PATEL whose telephone number is (571)270-3078. The examiner can normally be reached on Monday-Friday, alt. Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 24502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bharat C Patel/  
Examiner, Art Unit 3724  
September 22, 2009.

/Ghassem Alie/  
Primary Examiner, Art Unit 3724

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